

REC'D/PTO 17 SEP 2003

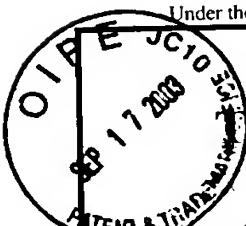
PTO/SB/21 (6-99)

Please type a plus sign (+) inside this box

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	10/049,658
		Filing Date	February 15, 2002
		First Named Inventor	Friedrich W. KUEHNE
		Group/Art Unit	Unassigned RECEIVED
		Examiner Name	Unassigned SEP 23 2003
Total Number of Pages in This Submission	25	Attorney Docket Number	25708-0038 OFFICE OF PETITIONS

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Version with Markings Showing Changes <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers <i>(for an Application)</i> <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Renewed Petition Under 37 C.F.R. 1.47(a) <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request for Refund	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group <i>(Appeal Notice, Brief, Reply Brief)</i> <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Additional Enclosure(s) <i>(please identify below):</i> 1. Stamped return postcard 2. Declaration of Paul M. Booth 3. Exhibits 1, 2, and 3 4. Declaration of Klaus Blaszkiewitz 5. Executed Declaration and Power of Attorney form
	Remarks	

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT

Firm or Individual name	Paul M. Booth, Reg. No. 40,244, HELLER EHRLMAN WHITE & McAULIFFE LLP		
Signature			
Date	September 17, 2003	Customer Number:	26633

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated below and addressed to: Mail Stop , Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450
20231, on this date:

Express Mail Label

Typed or printed name			
Signature	Date		

FEE TRANSMITTAL
for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 725.00)

Complete if Known

Application Number	10/049,658
Filing Date	February 15, 2002
First Named Inventor	Friedrich W. KUEHNE et al.
Examiner Name	Unassigned
Art Unit	Unassigned
Attorney Docket No.	25708-0038

RECEIVED

SEP 23 2003

OFFICE OF PETITIONS

METHOD OF PAYMENT (check one)

 Check Credit card Money Order Other None Deposit Account:Deposit Account Number
08-1641 (Docket No. 25708-0038)Deposit Account Name
Heller Ehrman White & McAuliffe LLP

The Commissioner is authorized to: (check all that apply)

Charge fee(s) indicated below Credit any overpayments

Charge any additional fee(s) during the pendency of this application

Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
1001	750	2001	375	Utility filing fee	
1002	330	2002	165	Design filing fee	
1003	520	2003	260	Plant filing fee	
1004	750	2004	375	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims		Fee from below	Fee Paid
	Independent Claims	Multiple Dependent		
			-20** =	
			-3** =	

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	84	2201	42	Independent claims in excess of 3
1203	280	2203	140	Multiple dependent claim, if not paid
1204	84	2204	42	**Reissue independent claims over original patent
1205	18	2205	9	**Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	410	2252	205	Extension for reply within second month	
1253	930	2253	465	Extension for reply within third month	725
1254	1,450	2254	725	Extension for reply within fourth month	
1255	1,970	2255	985	Extension for reply within fifth month	
1401	320	2401	160	Notice of Appeal	
1402	320	2402	160	Filing a brief in support of an appeal	
1403	280	2403	140	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,300	2453	650	Petition to revive - unintentional	
1501	1,300	2501	650	Utility issue fee (or reissue)	
1502	470	2502	235	Design issue fee	
1503	630	2503	315	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	750	2809	375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	750	2810	375	For each additional invention to be examined (37 CFR 1.129(b))	
1801	750	2801	375	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

* Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 725.00)

Complete (if applicable)

SUBMITTED BY	Name (Print/Type)	Registration No. (Attorney/Agent)	Telephone
	Paul M. Booth	40,244	202-912-2000
Signature		Date 9/17/03	Customer No. 26633

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

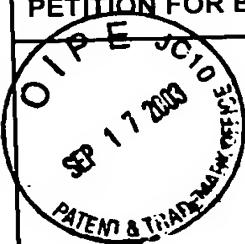
This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop _____, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

FORMS TO THIS ADDRESS. SEND TO: Mail Stop _____, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

Docket Number (Optional)
25708-0038

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)



In re Application of Friedrich W. KUEHNE et al.

Application Number 10/049,658 Filed February 15, 2002

For CHEMICALLY-STABILIZED CHLORITE SOLUTIONS FOR
TREATING CANCER AND OTHER DISEASESGroup Art Unit
Unassigned Examiner
Unassigned

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a response in the above identified application.

The requested extension and appropriate non-small-entity fee are as follows
(check time period desired):

<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$ _____
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$ _____
<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$ _____
<input checked="" type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$ <u>1450.00</u>
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$ _____

Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee amount shown above is reduced by one-half, and the resulting fee is: \$ 725.00 .

A check in the amount of the fee is enclosed.

Payment by credit card. Form PTO-2038 is attached.

The Commissioner has already been authorized to charge fees in this application to a Deposit Account.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 08-1641 .

I have enclosed a duplicate copy of this sheet.

I am the applicant/inventor.

assignee of record of the entire interest. See 37 CFR 3.71
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

attorney or agent of record.

attorney or agent under 37 CFR 1.34(a).

Registration number if acting under 37 CFR 1.34(a). _____

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

September 17, 2003

Date

Signature

Paul M. Booth, Reg. No. 40,244

Customer No. 26633

Typed or printed name

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

*Total of 1 forms are submitted.

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OFFICE OF PETIT

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APR 17 2003
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket No: 25708-0038

re patent application of
Friedrich W. KUEHNE et al.

Serial No.: 10/049,658

Filed: February 15, 2002

For: CHEMICALLY-STABILIZED CHLORITE SOLUTIONS FOR TREATING
CANCER AND OTHER DISEASES

Confirmation No.: 7719

Group Art Unit: Unassigned

Examiner: Unassigned

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SEP 23 2003

OFFICE OF PETITIONS

RENEWED PETITION UNDER 37 C.F.R. 1.47(a)

This is a request for reconsideration of applicants “Petition to Accompany Oath or Declaration When There is a Nonsigning Inventor” filed November 18, 2002. Applicant’s petition was dismissed without prejudice in a “Decision on Petition Under 37 CFR 1.47(a)” mailed by the United States Patent and Trademark Office (“USPTO”) on March 18, 2003. The initial deadline for filing the instant request for reconsideration expired on May 18, 2003 and has been extended by applicants for four additional months by the petition for extension of time and payment of fees attached hereto under 37 CFR 1.136(a).

BACKGROUND

On November 18, 2002, applicants filed a petition under 37 CFR 1.47(a) (the “First Petition”) requesting permission to prosecute the above-captioned application (the “instant application”) without the signature of co-inventor Dr. Vitam Kodelja (“Dr. Kodelja”). Applicants have been unable to reach Dr. Kodelja after several *bona fide* attempts.

In a decision of March 18, 2003, the PCT Legal Examiner (the “Legal Examiner”) denied applicants’ First Petition on the following grounds.

- (1) The Legal Examiner objected to the declaration filed by applicants with the First Petition because the first two pages of the declaration appeared to be a copy

of an original sheet but the third page appeared to be a copy of a page transmitted by facsimile. The Legal Examiner objected to this filing stating that applicants must provide a complete declaration which is presented to and signed by the declarant. The Legal Examiner further objected to the declaration because the signature block of Dr. Kodelja had been crossed out.

(2) The Legal Examiner objected to evidence of applicants' attempts to contact Dr. Kodelja. Specifically, the Legal Examiner objected that applicants did not submit an affidavit of a person with first hand knowledge of the contents of documents sent to Dr. Kodelja showing that the specification, claims, drawings and oath/declaration were sent to Dr. Kodelja. Furthermore, the Legal Examiner objected that applicants did not provide a copy of a cover letter of instructions which directed Dr. Kodelja to respond within a certain period of time.

RENEWED PETITION

Objection to the Inventor's Declaration. Applicants have submitted a new declaration executed by co-inventor Dr. Kuehne. Each page of the declaration is the original page of the document submitted to and signed by Dr. Kuehne. Furthermore, the signature block of Dr. Kodelja is not crossed out.

Evidence of a *Bona Fide* Attempt to Present the Application Papers.

1. Applicants attach hereto a declaration of the undersigned applicants' representative, Paul M. Booth (the "Booth Declaration"), specifying the contents of the application papers sent to Dr. Kodelja's last known home address by Federal Express. In addition to the Federal Express sent on September 27, 2002, which was submitted with the First Petition, applicants have couriered the complete specification and a declaration to Dr. Kodelja on May 6, 2003 and June 27, 2003. The cover letter for such packages, which is attached to the Booth Declaration, requests that the declaration be executed and returned by a date certain. The Federal Express record (attached to the Booth Declaration) for the package sent

on May 6, 2003, shows that it was received and signed by a "B. Kodelja", presumably Dr. Kodelja's wife Barbara Kodelja.

2. Applicants attach hereto a declaration of Dr. Klaus Blaszkiewitz. Dr. Blaszkiewitz is an employee of a sister company to the assignee of the instant application and is a consultant to the assignee of the instant application. Dr. Blaszkiewitz attests to the last known address of Dr. Kodelja. Dr. Blaszkiewitz further attests that Barbara Kodelja is the name of Dr. Kodelja's wife. Dr. Blaszkiewitz also attests to having made several attempts to contact Dr. Kodelja, without success.

Based on the foregoing, applicants have responded to each of the objections and requests stated by the Legal Examiner. Applicants further submit that they have provided significant evidence of a *bona fide* attempt to present a copy of the completed application and inventor's declaration to Dr. Kodelja at his home address. Based on the foregoing, applicants conclude that Dr. Kodelja either refuses to sign the declaration or cannot be found or reached after *bona fide* efforts by applicants.

ATTACHMENTS:

Inventor Declaration and Power of Attorney Executed by Dr. Kuehne
Declaration of Klaus Blaszkiewitz
Declaration of Paul M. Booth

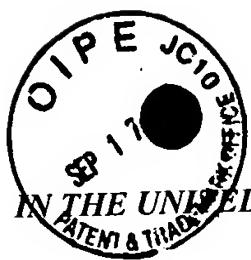
Respectfully submitted,

By 

Date: September 17, 2003

HELLER EHRLMAN WHITE &
MCAULIFFE
1666 K Street, N.W., Suite 300
Washington, DC 20006
Telephone: (202) 912-2142
Facsimile: (202) 912-2020

Paul M. Booth
Attorney for Applicant
Registration No. 40,244
Customer No. 26633



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket No: 25708-0038

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ON

In re patent application of

Friedrich W. KUEHNE et al.

Confirmation No.: 7719

Serial No.: 10/049,658

Group Art Unit: Unassigned

Filed: February 15, 2002

Examiner: Unassigned

For: CHEMICALLY-STABILIZED CHLORITE SOLUTIONS FOR TREATING
CANCER AND OTHER DISEASES

DECLARATION OF PAUL M. BOOTH UNDER 37 C.F.R. Section 1.47.

1. My name is Paul M. Booth.
2. I am an attorney at Heller Ehrman White & McAuliffe LLP ("Heller Ehrman").
3. I represent applicants in the above-captioned patent application ("the instant application").
3. On three separate occasions, a declaration for the instant application was sent by courier to the last known address of Dr. Vitam Kodelja ("Dr. Kodelja") accompanied by a cover letter requesting Dr. Kodelja's execution and return of the executed declaration to me. These documents were federal expressed at my direction and with a cover letter under my signature.
4. On the first occasion, a declaration for the instant application was sent by courier to Dr. Kodelja on September 25, 2002. A copy of the cover letter sent to Dr. Kodelja is attached as Exhibit 1 hereto. As stated in the cover letter, the Federal Express package contained, *inter alia*, (1) a declaration document for the instant application (2) a request in the cover letter for Dr. Kodelja's execution of the declaration and a request for the return of the executed declaration to me "as soon as possible". A copy of a print-out of the Federal Express internet tracking page for this package is attached as Exhibit 1. This print-out shows that the package was delivered on September 27, 2002 at 1:30 p.m. The document was signed for by a "GRAETZ." I assume the person signing was authorized to do so for Dr. Kodelja or for residents of Dr. Kodelja's

apartment complex. As discussed below, Federal Express will not deliver an international package without a signature.

5. On the second occasion, a declaration for the instant application and a copy of the complete application was sent by courier to Dr. Kodelja on May 6, 2003. A copy of the cover letter sent is attached as Exhibit 2. As stated in the cover letter, the Federal Express package contained, *inter alia*, (1) a declaration for the instant application, (2) a copy of the complete application (the letter contains a typographical error here in that it states that drawings are included; the application, however, does not contain any drawings) and (3) a request in the cover letter for Dr. Kodelja's execution of the declaration and return of the executed declaration to me by Friday May 16, 2003. A copy of a print-out of the Federal Express internet tracking page for this package is also attached as Exhibit 2. This print out shows that the package was delivered on May 8, 2003 at 10 a.m. The print out states that the document was signed for by "KODELJAJ." However, the Federal Express delivery record was obtained by Ms. Wanda Barton, a secretary at Heller Ehrman, which shows that the package was signed for by "B. Kodelja". A copy of this letter of July 22, 2003 from Federal Express to Ms. Barton and a copy of the delivery record showing the signature of "B. Kodelja" are attached to Exhibit 2. Dr. Kodelja's wife is named Barbara Kodelja.

6. On the third occasion, a declaration for the instant application and a copy of the complete application was sent by Federal Express to Dr. Kodelja on June 27, 2003. A copy of the cover letter sent is attached as Exhibit 3. As stated in the cover letter, the Federal Express package contained, *inter alia*, (1) a declaration for the instant application, (2) a copy of the complete application, and (3) a request in the cover letter for Dr. Kodelja's execution of the declaration and return of the executed declaration to me by Thursday July 10, 2003. A copy of a print out of the Federal Express internet tracking page for this package is also attached as Exhibit 3. This print out shows that the package was delivered on June 30, 2003 at 11:10 a.m. The print out states that the document was signed for by "RASENER." I assume the person signing was authorized to do so for Dr. Kodelja or for residents of Dr. Kodelja's apartment complex.

7. On June 27, 2003, Ms. Cindy Herron, an employee of Heller Ehrman, telephoned Federal Express and was informed by a Federal Express representative that all Federal Express international packages require a signature for delivery.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

September 17 2003

Date

PMBooth

Paul M. Booth